



RIGHTS STUFF

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Astronomer Says He Lost Job Offer Because of His Religion

Martin Gaskell was an astronomer at the University of Nebraska in 2007, and was a leading candidate for a job running the observatory at the University of Kentucky (UK). Michael Cavagnero is the chair of the U.K. physics and astronomy department and interviewed Gaskell. At the end of the interview, according to Gaskell, Cavagnero said he had researched Gaskell's religious beliefs and believed his "expression of [his religious] beliefs would be a matter of concern" to the dean.

According to the lawsuit, Cavagnero found out about Gaskell's religious beliefs when a staff member Googled him and found he had given talks on how the Bible could relate to contemporary astronomy. The UK staff member described Gaskell as being "complex and likely fascinating to talk with but potentially evangelical." Gaskell's attorney said he "couldn't have made up a better quote. 'We like this guy, but he is potentially Jewish? Potentially Muslim?'"

A UK colleague, Moshe Elitzur, said in a deposition that he worried that Gaskell "had outspoken public views about creationism and evolution. There's no way you can avoid the headline in The Herald-Leader saying 'UK hires a creationist for public outreach.'"

He said he feared bad publicity could result if they hired Gaskell to work at UK, which he noted is fewer than 100 miles from the Creation Museum in Petersburg, Kentucky.

Gaskell has written that "there are significant scientific problems in evolutionary theory (a good thing or else many biologists and geologists would be out of a job.)" In a lecture, he tried to reconcile the creation account in Genesis with recent astronomical findings. He said that he accepted standard evolutionary science, is not a creationist and does not deny the theory of evolution.

UK denied having discriminated against Gaskell on the basis of his religion, saying it chose another candidate based on "bona fide occupational qualifications."

The trial was scheduled to begin in February. The suit was settled before trial. UK paid Gaskell \$125,000.

Federal, state and local law all prohibit discrimination in employment on the basis of religion. If you have questions about your rights and responsibilities under fair employment laws, please call the BHRC.

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Woman Loses Race Discrimination Case

Sylvia Elmore, an African American woman, began working for Northwest Community Hospital (NCH) in November, 2001. She started out as a temporary claims credit project specialist, reviewing and reconciling patient account files and contacting patients and third-party payers to resolve account discrepancies. Before taking this job, she had worked in collections for several companies.

In June of 2002, Elmore told her supervisor that a co-worker had made a comment that she found offensive. He told her, "Your people don't need an education; all they need is a job." She believed he was saying African Americans don't need education. Her supervisor reprimanded the co-worker and the co-worker apologized. That fall, Elmore accepted a permanent position with the hospital as a claims specialist.

NCH regularly evaluates its employees, and from 2002 through 2007, its reviews of Elmore's job performance consistently said she needed to improve her attendance. Her 2004-05 review said that she "had often been excluded from time sensitive projects due to her inability to adhere to her scheduled hours, which has negatively impacted the productivity of the Credit/Project Team." Her next review said that her absences "continue to interfere with her ability to maintain her productivity at an

acceptable level and diminish her overall job performance." She was suspended for one day in July 2006 because of her poor attendance. NCH gave her a performance action plan outlining the company's expectations as far as her work attendance.

In April, 2007, NCH reassigned Elmore, making her a self-pay adjudicator in the customer service division. Her supervisors thought she would have more job security there because of planned layoffs, but apparently no one told her that at the time. She was placed at a desk where other adjudicators could hear her make calls, because her supervisors "liked how she sounded on the phone . . . she sounded very nice and very aggressive." NCH considered giving this position to two white employees as well, but did not.

Elmore did not report to work from May 8, 2007, through May 15, 2007. When she got back to work, she told her supervisors she intended to request FMLA time for her unscheduled absences in May. NCH sent her a letter, telling her to submit her FMLA forms by May 31. She did not. On July 10, she called in sick and said she would not return to work until July 24. NCH sent her another letter, requesting FMLA documentation by July 12. She did not submit any documentation and she did not return to work. NCH fired her on July 24, 2007, because of her numerous undocumented

and unexcused absences. She sued, alleging race discrimination in employment, and lost.

Elmore said that her negative performance reviews in 2005 and 2006, as well as her suspension in 2006, constituted an adverse employment action and created a hostile work environment. The court said that her "precise argument is difficult to discern," but both of her claims were clearly beyond the scope of her EEOC complaint. In her complaint with the EEOC, she said that her 2007 transfer was motivated by racism. She didn't mention her earlier reviews or suspension, and thus the court decided they were "not reasonably related to the allegations" in her EEOC charge. Nor was Elmore able to show that her transfer was an adverse employment action. Her wages and benefits stayed the same after the transfer. Part of both jobs involved collections.

An "adverse employment action is one that significantly alters the terms and conditions of the employee's job," and that was not true in this case. She argued that she would have fewer promotional opportunities in the self-pay adjudicator job, but she didn't provide any evidence to support that claim. And as the Court noted, "the fact that Elmore was displeased with her reassignment does not establish that the changes in job duties constituted an adverse employment action."



ADA and Correctional Facilities

When people think of the ADA, they tend to think of sidewalks, curb cuts and accessible parking spaces. They don't typically think of jails and prisons. But the ADA requires governments to make sure their services and facilities are accessible to the people they serve, including their jails and prisons.

The Department of Justice recently resolved several cases alleging discrimination against inmates with disabilities:

—An inmate with a mobility disability alleged that his request for orthopedic shoes had been denied by a North Carolina state correctional facility. The facility agreed to provide the shoes.

—An inmate with paraplegia com-

plained that a Wisconsin state correctional facility took away his motorized wheelchair and personal care worker as punishment. He also alleged that the facility failed to care for a skin condition that ultimately required surgery. The inmate is now being housed in the infirmary to meet his medical needs and a personal care worker has been assigned to assist him as needed in day-to-day activities. The facility returned his wheelchair to him.

—An inmate with a mobility disability alleged that a Missouri state prison was inaccessible to wheelchair users. The prison has installed ramps at various facility buildings including the administrative offices, a medical treatment trailer, a religious activities trailer, the custody building and several classrooms. Several tables in the dining room were modified for

wheelchair access. In the newest housing unit, showers, toilets and wing doors have been altered to provide access to inmates with mobility impairments. In addition, the prison has assigned aides to wheelchair users who have difficulty navigating parts of the complex.

—An inmate who is deaf complained that a West Coast correctional department failed to provide effective communication for programs and classes that he was required to attend before his release from prison. The department of corrections assigned a sign language interpreter to assist the inmate in routine day-to-day conversations, as well as transition program classes and meetings before his release, and designated an ADA coordinator for each of its facilities.

DOJ Requires Police Department to Change Hiring Procedures

The U.S. Department of Justice recently entered an agreement with the Illinois State Police Department, requiring ISP to change its hiring procedures. Previously, ISP had automatically excluded from consideration any police cadet applicant who had a hearing loss or who had diabetes mellitus, which is controlled by using an insulin pump.

Under the terms of the settlement, ISP will no longer automatically exclude such applicants. In-

stead, they will individually assess each applicant to see if he or she is eligible for hiring. ISP will also change its web page and all other publications to reflect this change in policy.

ISP also agreed to reinstate eight applicants they had rejected because of their hearing loss or diabetes, enroll them in a cadet class, provide them with retroactive seniority and pay them a salary congruent to their modified seniority date.

If you have questions about your rights and responsibilities under the Americans with Disabilities Act, please contact the Bloomington Human Rights Commission.





Jewish School Gets to Compete in Basketball Championship Game After All

The Robert M. Beren Academy, an Orthodox Jewish school in Houston whose students observe the Sabbath, won the right to play the Covenant School of Dallas in a state semifinal basketball tournament. But the game was scheduled for 9 p.m. on Friday, March 2, during the Beren students' Sabbath. The Beren Academy asked that the game be rescheduled to accommodate their religious beliefs. Otherwise, they would have to forfeit the game.

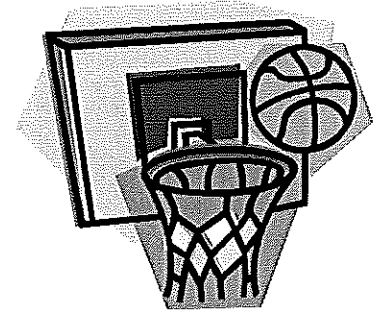
Initially, the Texas Association of Private and Parochial Schools (TAPPS), the group that organizes the event, was unwilling to change the time of the game, citing its bylaws. Lawyers representing Beren Academy players and their parents filed a complaint

and sought a temporary restraining order. Their lawsuit said that the students were "being put to the choice of violating their own religious beliefs and the beliefs imparted by the parent plaintiffs to their children, or forfeiting the opportunity to participate in the state basketball championship tournament." They said that failing to reschedule the game was a form of religious discrimination.

Critics of the decision not to reschedule included the mayor of Houston, a former coach of the Houston Rockets, religious groups and thousands of people on Facebook and Twitter. After the lawsuit and the public outcry, TAPPS agreed to reschedule the game for 2 p.m. on March 2.

The Beren Academy won the rescheduled game, 58 to 46, but it lost the final game of the tournament, 46 to 42, to Abilene Christian.

(Article based on *In Reversal*, a Jewish School Gets to Play, New York Times, March 2, 2012, page B9.)



IU Incidents Teams - An Important Resource For IU Students

Indiana University has several incidents teams - the Racial Incident Team, the Religious Bias Team and the Gay Lesbian, Bisexual and Transgender Team - that students should know about. The teams include members of the faculty and staff as well as students. Their goal is to respond to incidents involving bias-motivated harassment or discrimination.

The teams were established in 1988 and serve as educators and

mediators as well as assistants to victims in more formal proceedings. They have assisted with incidents as anonymous as graffiti and as blatant as assault. Team members are concerned about any incident having potential bias implications.

IU wants all students to be free to live, study and thrive in an environment that is welcoming and supportive of their pursuits. That belief is echoed in one tenet of

The Indiana Promise (IU's expression of students' commitment) that IU asks all students to consider: "I will respect the dignity of others, treating them with civility and understanding."

If you are an IU student and witness, experience or hear about incidents of bias, discrimination or harassment, please consider contacting them by calling 812.855.8188, emailing trust@indiana.edu or visiting www.indiana.edu/~trust.